IN THE

Supreme Court of the United States

October Term, 1976

~~76-555~~

SALYER LAND COMPANY, a corporation,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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Petitioner Salyer Land Company prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit, entered on April 5, 1976. The decision reversed the judgment of the United States District Court for the Eastern District of California. The Court of Appeals denied a petition for rehearing and reconsideration in banc.[1]

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1. This is a companion petition to the petition this day filed in *Tulare Lake Canal Company, et al., Petitioner* v. *United States of America, Respondent.* Petitioner Tulare Lake Canal Company was the defendant in an action filed by the United States. Tulare Lake Basin Water Storage District and Salyer Land Company were granted leave to intervene, in 1965 and 1968, respectively.

Opinions Below

The opinion of the United States District Court for the Eastern District of California, deciding this case in favor of the defendants, is reported at 340 F.Supp. 1185. The opinion of the United States Court of Appeals for the Ninth Circuit is reported at 535 F.2d 1093. The opinion of that court denying the petitions for rehearing and reconsideration in banc is reported at 535 F.2d 1143.

Jurisdiction

The judgment of the United States Court of Appeals was entered April 5, 1976. Separate petitions for rehearing and reconsideration in banc were timely filed by each of the three defendants, that of petitioner Salyer Land Company on April 16, 1976. The petitions were denied on June 7, 1976. On August 13, 1976, Mr. Justice Rehnquist extended the time to file this petition until October 20, 1976. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

Questions Presented

1. Petitioner Salyer Land Company adopts by reference each of the questions stated in the companion petition of Tulare Lake Canal Company this day filed, but in compliance with the requirement of brevity enjoined by Rule 23, will not repeat them.

2. The question presented by this petitioner is whether the Reclamation Act of 1902, and the acts supplementary to it, being expressly described as and intended for the

reclamation of arid land, can properly be applied to land classified as swamp and overflow under the Swamp and Overflow Act of September 28, 1850.

Statutory Provisions Involved

Act of September 28, 1850, 9 Stat. 519; Act of June 17, 1902, 32 Stat. 388; Act of May 26, 1926, 44 Stat. 657; Act of December 22, 1944, 58 Stat. 887.[2]

Statement of the Case

Tulare Lake Basin is a depression in the floor of the San Joaquin Valley in Kings and Tulare Counties, California, geologically the last remnant of the inland sea which once filled the Central Valley of California. The Basin comprises over 200,000 acres, some 190,000 of which lie within the boundaries of Tulare Lake Basin Water Storage District. Tulare Lake Basin remains the terminus for the principal rivers of the southern San Joaquin Valley, the Kings, Kern, Tule, and Kaweah.

The exterior boundaries of Tulare Lake Basin are the "segregation lines" drawn in the nineteenth century by federal officers pursuant to the Act of September 28, 1850, entitled "an Act to enable the State of Arkansas and other States to reclaim the 'Swamp Lands' within their limits."[3] In the terminology of nineteenth century land law, land above the segregation line was "high land", the title to

2. Because of the length of the statutory provisions, their pertinent text is set forth in the appendix. Rule 23(d).

3. 9 Stat. 519.

which remained in the United States. Land determined to be Swamp and Overflow became the property of the several states as of the date of the act, September 28, 1850. A map of the Swamp and Overflowed lands of Tulare Lake Basin, received in evidence at the trial of this cause as Exhibit I-R, is reproduced in the appendix.

Tulare Lake Basin was reclaimed by levees and drains constructed by "reclamation districts" organized under California law.[4] Large scale farming is practiced there, nothing else being practical because of flood danger, the heaviness of the soil, and the consequent necessity for heavy equipment. The floods of 1906, 1916-1917, 1937-1947, and 1952 are legendary. Since the flood of 1952 dams have been constructed by the United States on each of the four rivers leading to Tulare Lake Basin, Pine Flat on the Kings, Isabella on the Kern, Success on the Tule, and Terminus on the Kaweah. Despite construction of these dams, floodwaters entered Tulare Lake Basin in 1955, 1958, 1966-1967, and 1968-1969. At the peak of the great flood of 1969, there were 1,100,000 acre feet of floodwater in Tulare Lake Basin, and 89,000 acres of land were submerged. Some of these lands were flooded from February of 1969 until August of 1971. An aerial photograph showing the extent of the 1969 flood in Tulare Lake Basin was received in evidence as Exhibit I-S and is reproduced in the appendix. Tulare Lake has no outlet, and a geological formation known as the Corcoran clay prevents dissipation through the underground. The water remains until it has evaporated or been used for irrigation.

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4. Water Code §§50,000 ff.

Reclamation of the arid lands in the west began with the Act of June 17, 1902. The title of that legislation was, "An Act appropriating the receipts from the sale and disposal of public lands in certain States and Territories to the construction of irrigation works for the reclamation of arid lands." Pine Flat Dam on the Kings River was constructed pursuant to the Flood Control Act of 1944. Section 8 of the 1944 act authorized the Secretary of the Interior "to construct, operate, and maintain, under the provisions of the Federal reclamation laws (Act of June 17, 1902, 32 Stat. 388, and Acts amendatory thereof or supplementary thereto), such additional works in connection therewith as he may deem necessary for irrigation purposes."

No additional works were built, but considering the statute to be self-executing, the United States filed the present action as a test case in late 1963 to enjoin the use of water stored in Pine Flat Dam on any farm larger than 160 acres. There are some 1,065,000 acres in the Kings River service area, and the defendant Tulare Lake Canal Company was selected as the test case defendant, with responsibility for resisting the Government's case as to the whole of that service area.

Salyer Land Company was the only landowner party in the proceeding below. It farms in excess of 60,000 acres in Tulare Lake Basin, the vast majority of its holdings being within the swamp and overflow lines. Salyer Land Company considers that the position of Tulare Lake Canal Company is eminently correct, and that federal reclamation law cannot validly be applied to any portion of the Kings River service area, the Secretary of the Interior

having constructed no additional works, having furnished no new water, and the landowners in that service area having been repeatedly assured by the Government that in any event payout would relieve from acreage restriction. Salyer Land Company was granted leave to intervene in the United States District Court to assert a point not applicable to the entire Kings River service area, but only to Tulare Lake Basin, the different legal situation of those lands arising from the Swamp and Overflow Act of September 28, 1850, and Salyer Land Company files this separate petition for certiorari in order to emphasize this separate character of Tulare Lake Basin.

The United States District Court decided the case in favor of the defendants, and made detailed findings on the impossibility of dividing Tulare Lake Basin into 160 acre farms. One finding referred to certain studies originating from the Bureau of Reclamation itself, which concluded "that it was not feasible to attempt to apply the acreage limitation provisions of reclamation law to the Tulare Lake Basin." The Court concluded that it was "infeasible and would produce bizarre and absurd consequences if an attempt were made to impose acreage limitation and family-farm settlements within the Tulare Lake Basin."

The Court of Appeals reversed, saying,

> ". . . Tulare Lake Basin is not the Kings River project. The Basin includes just over 200,000 acres; the Kings River project contains 1,065,000 acres. No one suggests that it would be impracticable to apply acreage limitation provisions to the project land outside the Basin."[5]

5. 535 F.2d at 1114.

To the argument of flood risk, the Court of Appeals replied that there was testimony at the trial that, on a statistical basis, as much as 20,000 acres could be expected to be flooded only once every eleven years, and that 89,000 acres could be expected to be flooded only every 30½ years.[6] This was not the view of the trial court, its finding being that Tulare Lake Basin is "subject to periods of extensive flood," and that "Subdivision and settlement of the area would be hazardous and unwise." Petitions for rehearing and reconsideration in banc were denied.

Reasons for Granting the Writ

1. Petitioner Salyer Land Company adopts by reference each of the reasons stated in the companion petition of Tulare Lake Canal Company this day filed, but in compliance with the requirement of brevity enjoined by Rule 23, will not repeat them.

2. The swamp and overflowed lands of Tulare Lake Basin, being arid neither in fact nor in law, cannot be made subject to the Reclamation Act of 1902 and the other reclamation acts which have followed it.

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6. *Ibid.* The Court of Appeals seems to have assumed that this 89,000 acre figure was in some way a maximum for major floods of the 1969 type. But the waters of the 1969 flood were confined to 89,000 acres only by desperate measures. The levee of Tulare Lake Reclamation District No. 749 was cut on February 25, 1969 to prevent its imminent breach. On March 17 the levee of Lovelace Reclamation District failed. Only extraordinary efforts by both man and machine held the remaining major levees, the South Central and those of North Central Reclamation District, El Rico Reclamation District and Consolidated Reclamation District. Had these levees failed, Tulare Lake would have covered 145,000 acres, and would have reached the 187 foot contour level. At the peak of the flood the water stood at 192.5 U.S.G.S. datum, with only some three feet of freeboard from the crown of the levees. A break would have released a wall of water 20 feet high.

The first major venture of the United States into the field of reclamation came fifty-two years before the Reclamation Act of 1902, with the grant to the several states of the swamp and overflowed lands therein. The title of the legislation enacted as of September 28, 1850 was "An Act to enable the State of Arkansas and other States to reclaim the 'Swamp Lands' within their limits." The measure was short, but of enormous consequence, for under it over 60,000,000[7] acres of land were granted to the several states:

> "*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That to enable the state of Arkansas to construct the necessary levees and drains to reclaim the swamp and overflowed lands therein, the whole of those swamp and overflowed lands made unfit thereby for cultivation, which shall remain unsold at the passage of this act, shall be and the same are hereby granted to said state.
>
> "Sec. 2. *And be it further enacted*, That it shall be the duty of the Secretary of Interior, as soon as may be practicable after the passage of this act, to make out an accurate list and plats of the lands described as aforesaid, and transmit the same to the governor of the state of Arkansas, and at the request of said governor, cause a patent to be issued to the state therefor; and on that patent the fee simple to the lands shall vest in the said state of Arkansas, subject to the disposal of the legislature thereof: *Provided, however*, That the proceeds of said lands, whether from sale or by direct appropriation in kind, shall be applied exclusively, as far as necessary, to the purpose of reclaiming said lands by means of the levees and drains aforesaid.
>
> "Sec. 3. *And be it further enacted*, That in making out a list and plats of the land aforesaid, all legal sub-

7. 35 Cong. Rec. 6680 (1902) (Remarks of Congressman Mondell).

> divisions, the greater part of which is 'wet and unfit for cultivation,' shall be included in said list and plats; but when the greater part of a subdivision is not of that character, the whole of it shall be excluded therefrom.
>
> "Sec. 4. *And be it further enacted*, That the provisions of this act be extended to, and their benefits be conferred upon, each of the other states of the Union in which such swamp and overflowed lands, known and designated as aforesaid, may be situated."[8]

Probably the leading case on the swamp and overflow act is *Wright* v. *Roseberry*, 121 U.S. 488 (1887). The case came up from California and the opinion was written by Mr. Justice Field, who had been Chief Justice of the California Supreme Court. The question in *Wright* was the effective date of passage of title to the states,

> "whether at the date of the act, or on the issue of the patent to the state upon the request of the governor, after the list and plats of the lands were made out by the Secretary of the Interior and transmitted to him. The question was one of great importance to all the states in which there were swamp and overflowed lands. These lands amounted to many millions of acres."[9]

The Court of Appeals' opinion reveals a profound misunderstanding both of western history and geography when it states that "all of the land area of the United States west of the 98th meridian is commonly referred to as 'arid or semi-arid.' "[10]

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8. 9 Stat. 519.
9. 121 U.S. at 496.
10. 535 F.2d at 1117.

> "In California alone there were, according to the reports of the Land Department, nearly two millions of acres [of swamp and overflowed land].
>
> "The object of the grant, as stated in the act, was to enable the several states to which it was made, to construct the necessary levees and drains to reclaim the lands; and the act required the proceeds from them, whether from their sale or other disposition, to be used, so far as necessary, exclusively for that purpose. The early reclamation of the lands was of great importance to the states, not only on account of their extraordinary fertility when once reclaimed, but for the reason that until then they were the cause of malarial fevers and diseases in the neighborhood."[11]

Even in a time of muddled English there is a difference between a swamp and a desert. The measures to reclaim the one vary from the measures to reclaim the other. Swamps are to be drained of water; deserts are to have water brought to them. The 1850 act accordingly provided that the lands thereby granted to the states should be reclaimed by construction of the "necessary levees and drains." It also provided that the lands classified as swamp and overflow should be those which were "wet and unfit for cultivation."[12]

Within five years of the passage of the swamp and overflow act California proceeded with the task of reclamation:

> "As early as 1855 the legislature of California undertook to control and dispose of those lands. The Secretary of the Interior had neglected to make out

11. *Wright* v. *Roseberry, supra,* 121 U.S. at 496.

12. Act of September 28, 1850, §3.

> any list and plats of the lands of this character, and to transmit them to the governor of the state, as required by the second section of the act of 1850. The State, therefore, proceeded, in 1855, to assert her ownership over the lands, by providing for their survey and sale, and the issue of patents to the purchasers. Further legislation was also had on the subject in 1858 and 1859; and, in 1861, an act was passed providing for their reclamation and segregation, making it the duty of the county surveyors to segregate these lands in their respective counties from the high lands, and to make a complete map of the lands in legal subdivisions of sections and parts of sections, and to transmit a duplicate thereof to the surveyor general of the state."[13]

The task of constructing the necessary levees and drains was confided by the California legislature to "reclamation districts,"[14] the first of which was organized within eleven years of the Act of September 28, 1850.[15] California law still provides for reclamation districts.[16] There are some eighteen in Tulare Lake Basin alone. They have

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13. *Wright* v. *Roseberry, supra,* 121 U.S. at 511. The first California legislation following the Act of September 28, 1850 was the Act of April 28, 1855, Cal.Stats. 1855, Chap. 151, page 189, entitled "An act to provide for the sale of the swamp and overflowed lands belonging to the State."

14. This Court, in *Hagar* v. *Reclamation District No. 108,* 111 U.S. 701 (1884), spoke of "the system adopted in California to reclaim swamp and overflowed lands by forming districts. . . ." [111 U.S. at 704.]

15. See Bulletin No. 37, California Department of Public Works, "Financial and General Data pertaining to Irrigation, Reclamation and other public districts of California" (1930) for a historical discussion of California Reclamation Districts.

16. Water Code, §§50,000 ff.

constructed the "necessary levees and drains" contemplated by the act of September 28, 1850.[17]

Exhibit I-R, reproduced in the appendix to this petition to show the swamp and overflowed lands of Tulare Lake Basin, includes a central area in white. This was the bed of Tulare Lake as it existed on September 9, 1850, the date of California's admission to the Union. Title to this central area thus passed to the State nineteen days earlier than the effective date of the swamp and overflow act. When reclamation of the swamp and overflow areas of Tulare Lake Basin began, and when the waters of Tulare Lake themselves began to recede, California treated this central area which had come to it as the bed of a navigable lake, as "unsegregated swamp and overflowed lands". The Act of March 24, 1893 was entitled "An act regulating the sale of the lands uncovered by the recession or drainage of the waters of inland lakes, and *unsegregated swamp and overflow lands*, and validating sales and surveys heretofore made".[18] This statute was concerned primarily with Tulare Lake Basin.

> "The act of 1893 * * * was passed for the purpose, primarily, of meeting the conditions created by the gradual recession of Tulare Lake." *Churchill Co.* v. *Kingsbury*, 178 Cal. 554, 559, 174 Pac. 329 (1918).

The Act of September 28, 1850 operated *in praesenti;* a later patent "relates back and gives certainty to the title of the date of the grant".[19]

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17. The location of the several reclamation districts of Tulare Lake Basin is as shown on Exhibit I-C. This exhibit also shows the location of the major levees.

18. Now §§7601 ff., Public Resources Code. [Emphases added throughout this petition.]

19. *Wright* v. *Roseberry, supra,* 121 U.S. at 507.

> "That the swamp land act of 1850, operated as a grant *in praesenti* to the States then in existence of all the swamp lands in their respective jurisdictions, is well settled."[20]

It results that none of the land in Tulare Lake Basin has been federal public land since September of 1850. "They were not afterwards public lands at the disposal of the United States."[21] And their swamp and overflowed character may not be questioned by the United States in this lawsuit. The swamp and overflow lines and the patents shown on Exhibit I-R reflect decisions "conclusive as against the United States that they were such lands. . . ."[22]

The circuitous process by which the Government seeks to impose the 160 acre limitation on Tulare Lake Basin derives from §8 of the Flood Control Act of 1944:

> "Hereafter, whenever the Secretary of War determines, upon recommendation by the Secretary of the Interior that any dam and reservoir project operated under the direction of the Secretary of War may be utilized for irrigation purposes, the Secretary of the Interior is authorized to construct, operate, and maintain, under the provisions of the Federal reclamation laws (*Act of June 17, 1902, 32 Stat. 388, and Acts amendatory thereof or supplementary thereto*), such additional works in connection therewith as he may deem necessary for irrigation purposes."

But it is plain, when the legislative history of the Reclamation Act of 1902 is examined, that the Congress

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20. *Id.* at 508.

21. *Id.* at 521.

22. *Id.* at 517.

had no thought of applying its provisions to the land which it had hitherto granted to the states as swamp and overflow. The title of the 1902 act was itself clear enough:

> "An act appropriating the receipts from the sale and disposal of public lands in certain States and Territories to the construction of irrigation works for the reclamation of *arid lands.*"[23]

The Court of Appeals gave short shrift to this consideration:

> "Enough has been said to dispose of appellees' related argument that section 8 was intended to apply only to the reclamation of 'arid' lands (meaning, in appellees' argument, lands not already under irrigation) because section 6 of the House bill used this adjective and section 8 was intended to accomplish only 'technical' changes in the House version. Only a brief exposure to reclamation jargon is required to learn that all of the land area of the United States west of the 98th meridian is commonly referred to as 'arid or semi-arid.' "[24]
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> * * *
>
> "The lands were not 'arid' in appellees' sense because they were receiving water through the existing locally operated irrigation system. As we have shown, the existence of a private irrigation system is not relevant to the application of §8."[25]

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23. The concept of aridity has continued to be express in all legislation relating to the 1902 act. For example, the Act of May 26, 1926, 44 Stat. 657, states as follows:

> "Under the supervision and direction of the Secretary of the Interior, the reclamation of *arid lands*, under the Act of June 17, 1902, and Acts amendatory thereof and supplementary thereto, shall be administered by a Commissioner of Reclamation who shall be appointed by the President."

24. 535 F.2d at 1117.

25. *Ibid.*

It ought to be observed that the lands in Tulare Lake Basin, contrary to these repeated statements of the Court of Appeals, are not arid because of being irrigated, but rather because they were officially classified—by the same Government which is the plaintiff in this case—as swamp and overflow. Even in a time when language is seen to be an instrument for confusion rather than clarity, *wet* and *dry* have different meanings.

The statement by the Court of Appeals that all the "land area of the United States west of the 98th meridian is commonly referred to as 'arid or semi-arid'," ought to be further contrasted with the language of those in the Congress who managed the Reclamation Act of 1902.

> "The urgency of the case, Mr. President, lies in the fact that the public domain in the humid and subhumid sections of the West is well-nigh exhausted. The frontiers of western settlement are on the very verge of the arid and semi-arid region. Indeed, a large proportion of the home seekers of the past two years, in their eagerness for land, have pushed on beyond the humid into the semi-arid areas in the hope that either a wise Providence or a dutiful Congress, or both, would eventually rescue them from the dangers of drought."[26]

Senator Clark of Wyoming was active in the debate which was recorded under the heading, "Reclamation of Arid Lands":[27]

> "If the Congress of the United States has no power to assist in the reclamation of arid lands, then

26. 35 Cong. Rec. 1383 (1902) (Remarks of Senator Hansbrough). The Senator went on to speak of "development of the arid public lands beyond the one hundredth meridian. * * *" *Id.* at 1386.

27. 35 Cong. Rec. 2218 (1902).

> the subject should be dropped and the discussion which has been going on in and out of Congress and in public meetings and prints for so long should be closed and the lands left desert and bare, given up to the homes of the wolf and coyote. . . ."[28]
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> * * *
>
> "The principal object and purpose of this bill is to redeem the desert lands of our arid regions, give them life and vitality by the application of water. . . ."[29]

Senator Steward of Nevada also participated in the 1902 debate:

> "Then, besides, this arid country is not valuable for agriculture alone. In this region there are minerals of all descriptions—coal, iron, lead, copper, gold, and silver, and all that."[30]
>
> * * *
>
> "There is nothing to destroy human life there. There is no malaria, no damp climate, nor anything that tends to destroy human life. In that high altitude . . . I have no doubt, that the population will increase largely."[31]

The bill having passed the Senate, it went to the House, where on March 4, 1902 it was referred to the "Committee on Irrigation of Arid Lands."[32]

In a discussion on June 12, 1902 as to whether to take up the bill, Mr. Robinson of Indiana stated its purpose with clarity:

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28. *Id.* at 2219.
29. *Id.* at 2223.
30. *Id.* at 2278.
31. *Id.* at 2279.
32. *Id.* at 2381.

> "To be entirely frank with the House, I regard it as an arid-land bill and nothing else."[33]

The Congress knew quite well of the separate treatment it had given swamp and overflowed lands. Mr. Underwood used the grant of the swamp and overflowed lands to answer certain objections to the proposed provision for arid lands:

> "Now, is it going a single step further than we have already gone when we consider the grants for the draining of overflow lands and the raising of dikes and levees to prevent the overflow to say that we will grant these lands or the proceeds derived from the sale of public lands for the purpose of conserving the waters of their torrential streams in order that they may be used to irrigate those lands that are now barren for the lack of rainfall. . . .?"[34]

When the debate proper began, primary responsibility for managing the bill in the House was given to Mr. Mondell of Wyoming. He made express reference to the prior grant of 64,498,757 acres of land as swamp and overflow:

> "If Congress has the right, which has never been denied, to give away public lands . . . it is clear that Congress has the authority, as we propose, to provide for the creation of a trust fund from the proceeds of the sales of public lands. . . ."[35]

Mr. Mondell went on to speak of the purpose of the proposed act as "reclamation from the desert. . . ."[36]

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33. *Id.* at 6670.

34. *Id.* at 6672.

35. *Id.* at 6680.

36. *Id.* at 6681.

The point was made with great force, on June 13, 1902, by Mr. Jones of Washington:

> "The Government has granted swamp lands to the States upon the condition that they will reclaim them. If it can do this, can it not provide for the irrigation and watering of its own lands in its own way and by the exercise of its own power?"[37]

The Reclamation Act of 1902 became law four days after that statement. It requires the grossest misapprehension, not only of language but of history itself, to seek to apply that statute and those which have followed it to the swamp and overflowed lands of Tulare Lake Basin. In doing so, the Court of Appeals has decided an important question of federal law which has not been, but should be, settled by this Court.

Conclusion

For the reasons stated above, the petition should be granted.

Respectfully submitted,

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Of Counsel:
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Wharton & Garrison

October, 1976

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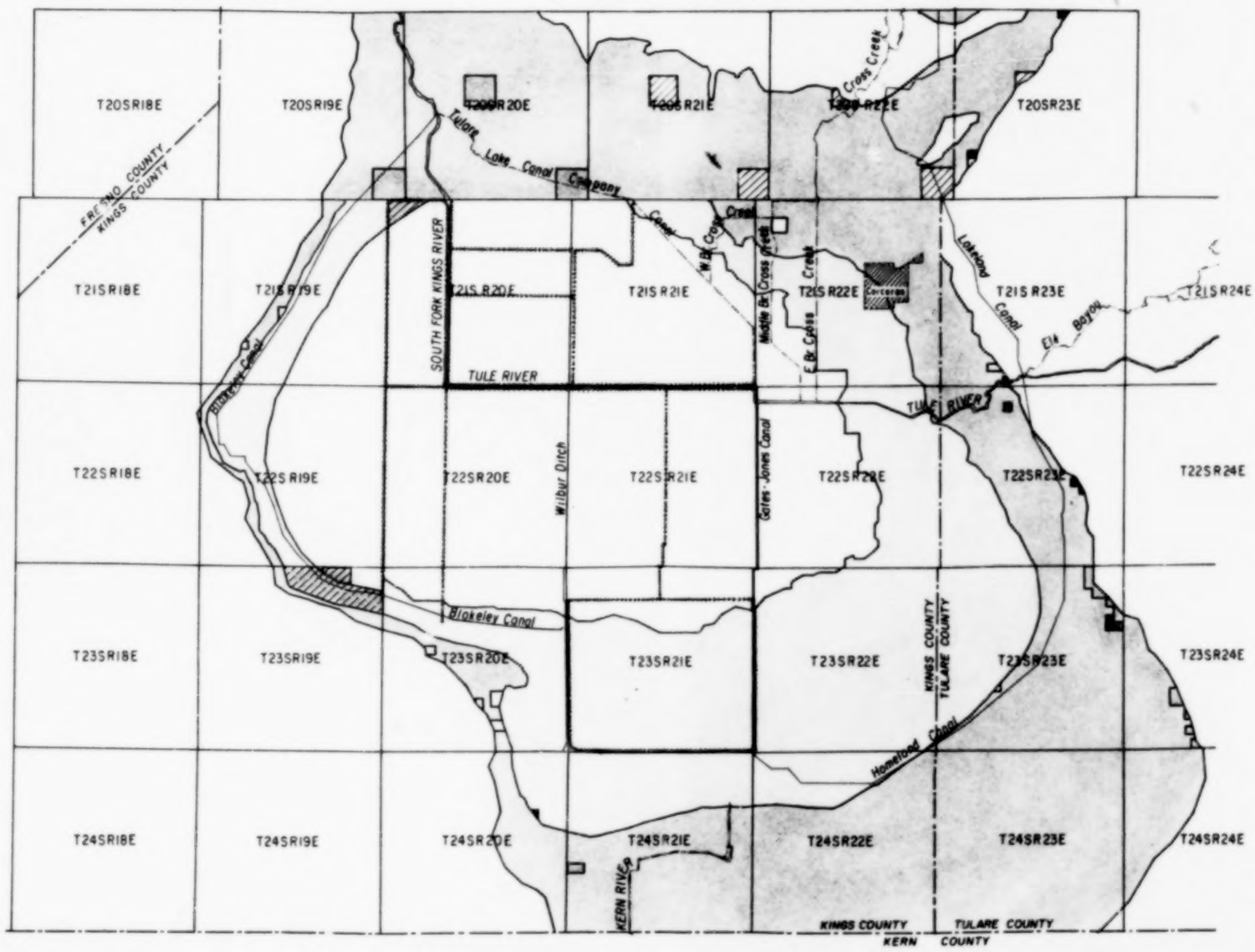
37. *Id.* at 6752.

EXHIBIT I-R

MAP OF SWAMP AND OVERFLOWED LANDS OF TULARE LAKE BASIN



North

Scale of Miles: 0 1 2 3 4 5

LEGEND

Color Code	Patent Number	Patent Date
	2	July 14, 1869
	3	September 8, 1874
	4	November 11, 1882
	7	November 18, 1887
	78	October 30, 1896
	87	October 24, 1900
	123	February 8, 1905
	137	March 14, 1906
	157 (210527)	June 22, 1911
	161 (309893)	January 13, 1913
	182 (638550)	January 13, 1913
	189 (666111)	February 14, 1919

Engineer's Certificate

STATE OF CALIFORNIA / COUNTY OF KINGS

I HEREBY CERTIFY that this map, prepared under my supervision at the request of the Board of Directors of the Tulare Lake Basin Water Storage District, delineates the Swamp and Overflowed Lands of the Tulare Lake Basin as compiled from various Public Records.

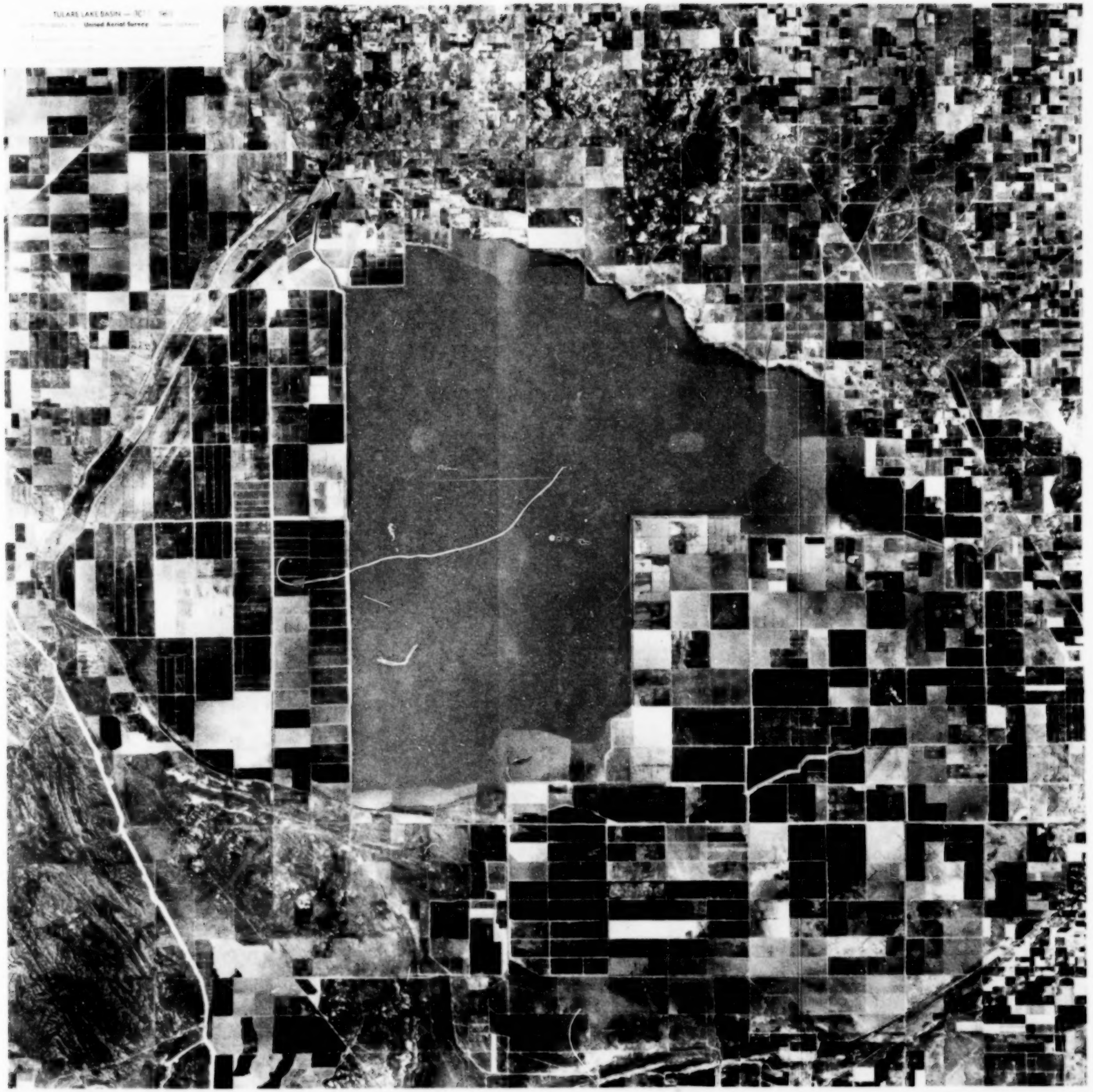
WITNESS my hand and seal this 6th day of July, 1967

Joseph B. Summers, R.C.E. 6822

REGISTERED PROFESSIONAL ENGINEER
JOSEPH B. SUMMERS
No. 6822
CIVIL
STATE OF CALIFORNIA

EXHIBIT I-S

TULARE LAKE BASIN — [illegible]
United Aerial Service [illegible]



STATUTES INVOLVED

Act of September 28, 1850, 9 Stat. 519

"An Act to enable the State of Arkansas and other States to reclaim the 'Swamp Lands' within their limits.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That to enable the state of Arkansas to construct the necessary levees and drains to reclaim the swamp and overflowed lands therein, the whole of those swamp and overflowed lands made unfit thereby for cultivation, which shall remain unsold at the passage of this act, shall be and the same are hereby granted to said state.

"Sec. 2. *And be it further enacted,* That it shall be the duty of the Secretary of Interior, as soon as may be practicable after the passage of this act, to make out an accurate list and plats of the lands described, as aforesaid, and transmit the same to the governor of the state of Arkansas, and at the request of said governor, cause a patent to be issued to the state therefor; and on that patent the fee simple to the lands shall vest in the said state of Arkansas, subject to the disposal of the legislature thereof: *Provided, however,* That the proceeds of said lands, whether from sale or by direct appropriation in kind, shall be applied exclusively, as far as necessary, to the purpose of reclaiming said lands by means of the levees and drains aforesaid.

"Sec. 3. *And be it further enacted,* That in making out a list and plats of the land aforesaid, all legal subdivisions, the greater part of which is 'wet and unfit for cultivation,' shall be included in said list and plats; but when the greater part of a subdivision is not of that character, the whole of it shall be excluded therefrom.

"Sec. 4. *And be it further enacted,* That the provisions of this act be extended to, and their benefits be conferred upon, each of the other states of the Union in which such swamp and overflowed lands, known and designated as aforesaid, may be situated."

Act of June 17, 1902, §3, 32 Stat. 388

That the Secretary of the Interior shall, before giving the public notice provided for in section 4 of this act, withdraw from public entry the lands required for any irrigation works contemplated under the provisions of this act, and shall restore to public entry any of the lands so withdrawn when, in his judgment, such lands are not required for the purposes of this act; and the Secretary of the Interior is hereby authorized, at or immediately prior to the time of beginning the surveys for any contemplated irrigation works, to withdraw from entry, except under the homestead laws, any public lands believed to be susceptible of irrigation from said works: *Provided,* That all lands entered and entries made under the homestead laws within areas so withdrawn during such withdrawal shall be subject to all the provisions, limitations, charges, terms, and conditions of this act; that said surveys shall be prosecuted diligently to completion, and upon the completion thereof, and of the necessary maps, plans, and estimates of cost, the Secretary of the Interior shall determine whether or not said project is practicable and advisable, and if determined to be impracticable or unadvisable he shall thereupon restore said lands to entry; that public lands which it is proposed to irrigate by means of any contemplated works shall be subject to entry only under the provisions of the

homestead laws in tracts of not less than 40 nor more than 160 acres, and shall be subject to the limitations, charges, terms, and conditions herein provided: *Provided*, That the commutation provisions of the homestead laws shall not apply to entries made under this act.

Act of May 26, 1926, 44 Stat. 657

Under the supervision and direction of the Secretary of the Interior, the reclamation of arid lands, under the Act of June 17, 1902, and Acts mandatory thereof and supplementary thereto, shall be administered by a Commissioner of Reclamation who shall be appointed by the President.

Flood Control Act of 1944, §8, 58 Stat. 891

Hereafter, whenever the Secretary of War determines, upon recommendation by the Secretary of the Interior that any dam and reservoir project operated under the direction of the Secretary of War may be utilized for irrigation purposes, the Secretary of the Interior is authorized to construct, operate, and maintain, under the provisions of the Federal reclamation laws (Act of June 17, 1902, 32 Stat. 388, and Acts amendatory thereof or supplementary thereto), such additional works in connection therewith as he may deem necessary for irrigation purposes. Such irrigation works may be undertaken only after a report and findings thereon have been made by the Secretary of the Interior as provided in said Federal reclamation laws and after subsequent specific authorization of the Congress

by an authorization Act; and, within the limits of the water users' repayment ability such report may be predicated on the allocation to irrigation of an appropriate portion of the cost of structures and facilities used for irrigation and other purposes. Dams and reservoirs operated under the direction of the Secretary of War may be utilized hereafter for irrigation purposes only in conformity with the provisions of this section, but the foregoing requirement shall not prejudice lawful uses now existing: *Provided*, That this section shall not apply to any dam or reservoir heretofore constructed in whole or in part by the Army engineers, which provides conservation storage of water for irrigation purposes.